

BILL NUMBER: AB 921 AMENDED
BILL TEXT

AMENDED IN SENATE JULY 7, 1999
AMENDED IN ASSEMBLY MAY 20, 1999
AMENDED IN ASSEMBLY MAY 11, 1999

INTRODUCED BY Assembly Member Keeley

FEBRUARY 25, 1999

An act to amend Sections 1777.5, 1777.7, 3070, 3075, and 3080 of, and to add Sections 3073.1 ~~3098, and 3098.1~~ and 3098 to, the Labor Code, relating to apprenticeship programs.

LEGISLATIVE COUNSEL'S DIGEST

AB 921, as amended, Keeley. Apprenticeship programs. Existing law establishes the California Apprenticeship issue rules and regulations that establish apprenticeship among other things. The council is composed of 14 members by the Governor plus the Director of Industrial Relations or her designee, the Superintendent of Public Instruction or his or her designee, and the Chancellor of the California Community Colleges or his or her designee. The Governor's appointees include 6 representatives each from employer and employee organizations geographically selected, and 2 representatives of the general public. *Betty - this is a copy of the Proposed law that will be submitted to the State Legislature if approved.*

This provision also provides that each member of the council receive \$50 for each day of actual attendance at council or meetings together with actual and necessary traveling expenses.

This bill would provide that the Governor's appointees shall be representatives each from employer organizations that sponsor apprenticeship programs and employee organizations that sponsor apprenticeship programs, geographically selected, and 2 representatives of the general public. This bill would also increase the council members' per diem to \$100 for each day of actual attendance at council or committee meetings together with actual and necessary traveling expenses. *George*

Existing law requires the Chief of the Division of Apprenticeship Standards or his or her representative, among other things, to foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment.

This bill would additionally require the division to audit all apprenticeship programs at least once every 5 years to ensure compliance with specified requirements and require every apprenticeship program sponsor to cooperate with the division in conducting the audit. The audit reports would be presented to the California Apprenticeship Council and made public, except as specified. The chief would recommend remedial action to correct deficiencies and failure to correct them within a reasonable time would be grounds for withdrawing state approval of a program.

Existing law requires that the ratio of apprentice work to journeyman work performed on public works be not less than one hour of apprentice's work for every 5 hours by a journeyman, except as specified in the case of the land surveyor classification. A violation of this provision is punishable by a civil penalty of \$50 per day of noncompliance.

This bill would eliminate the land surveyor exception and increase

http://www.leginfo.ca.gov/pub/bill/asm/ab_090.../ab_921_bill_19990707_amended_sen.htm 07/27/1999

the civil penalty to \$100 for each day of noncompliance. This bill would also impose a civil penalty of \$300 for each day of noncompliance in the event of a subsequent violation of this provision within a 3-year period.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares that apprenticeship programs are a vital part of the educational system in California. It is the purpose and goal of this legislation to strengthen the regulation of apprenticeship programs in California, to ensure that all apprenticeship programs approved under Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code meet the high standards necessary to prepare apprentices for the workplaces of the future and to prevent the exploitation of apprentices by employers or apprenticeship programs. It is further the intent of the Legislature that apprenticeship programs should make active efforts to recruit qualified men, women, and minorities and train them in the skills needed for the workplace.

SEC. 2. Section 1777.5 of the Labor Code is amended to read:

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

~~Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed~~

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

~~Only~~

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards ~~and~~ that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with either (1) the apprenticeship standards and apprentice agreements under which he or she is training or (2) with the rules and regulations of the California Apprenticeship Council .

~~When~~

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, or any subcontractor under him or her, in performing any of the work under the contract or subcontract, employs workers in any apprenticeable craft or trade, the contractor ~~and subcontractor shall apply to the joint apprenticeship~~ or subcontractor shall employ apprentices in the ratio set forth in this section and may apply to any apprenticeship committee administering ~~the~~ apprenticeship standards of the craft or trade ~~in the area of~~ that can provide apprentices to the site of the public work for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected.

However, approval as established by the ~~joint~~ apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The ~~joint~~ apprenticeship committee or ~~committees, subsequent~~ to approving the subject committees, upon approving the contractor or subcontractor, shall arrange for the dispatch of apprentices to the contractor or subcontractor ~~in order to comply with this section. Every contractor and subcontractor shall submit contract award information to the applicable joint apprenticeship committee that includes an estimate of journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There is an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the craft or trade in the area of the site of the public work to ensure equal employment and affirmative action in apprenticeship for women and minorities. Contractors or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice's work for every five hours of labor performed by a journeyman.~~

~~Any ratio~~ . "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council.

(e) Prior to commencing work on a contract for public works, every contractor and subcontractor shall submit contract award information to an applicable apprenticeship committee or committees that can supply apprentices to the site of the public work, including an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body and to the Division of Apprenticeship Standards. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body and to the Division of Apprenticeship Standards a verified statement of the journeyman and apprentice hours performed on the contract. The information submitted to the Division of Apprenticeship Standards under this subdivision shall be public information.

(f) The apprenticeship committee or committees administering apprenticeship standards of a craft or trade that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities. A contractor or subcontractor shall not be required to submit an individual application for approval to an apprenticeship committee provided the contractor or subcontractor is already covered by the apprenticeship committee's standards.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship committee operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of

journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day ~~when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the~~ when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of ~~a joint~~ an apprenticeship committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

~~The contractor or subcontractor, if he or she is covered by this section, upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the contractor that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by a journeyman, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1 to 5 hourly ratio as set forth in this section.~~

~~This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000) or 20 working days. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the hourly ratio required by this section.~~

~~"Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. The joint apprenticeship committee has the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a contractor from the 1 to 5 ratio set forth in this section when it finds that any one of the following conditions is met:~~

~~(a)~~

(i) A contractor or subcontractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards.

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship committee has the discretion to grant a

certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

~~(b)~~

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

~~(c)~~

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

~~(d)~~

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large ~~or if~~, or

the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

~~When exemptions are granted to an organization that~~

(1) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

~~A~~

(m) A contractor to whom the contract is awarded, or any subcontractor under him or her, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any craft or trade in the area of the site of the public ~~work~~

works, to which fund or funds other contractors in the area of the site of the public ~~work~~ works are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as the other contractors do, but, where the ~~trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay~~

fund or funds do not accept those contributions, the contractor or subcontractor shall pay a like amount to the California Apprenticeship Council. The contractor or subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Section 227. Where an apprenticeship program dispatches apprentices to a contractor or subcontractor, and the contractor or subcontractor makes payments to the California Apprenticeship Council in lieu of contributing to the fund or funds that support the apprenticeship program, the California Apprenticeship Council shall maintain these payments in a separate account. At the end of each fiscal year the California Apprenticeship Council shall make grants to each apprenticeship program equal to the amount that the California Apprenticeship Council has received during the fiscal year in payments pursuant to

this subdivision on account of training provided by the apprenticeship program.

~~The~~
(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

~~All decisions of the joint apprenticeship committee~~

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000) or 20 working days.

(p) All decisions of an apprenticeship committee under this section are subject to Section 3081.

SEC. 3. Section 1777.7 of the Labor Code is amended to read:

~~1777.7. (a) In the event a contractor or subcontractor willfully fails to comply with Section 1777.5, the Director of Industrial Relations shall deny to the contractor or subcontractor, both individually and in the name of the business entity under which the contractor or subcontractor is doing business, the right to bid on, or to receive, any public works contract for a period of up to one year for the first violation and for a period of up to three years for the second and subsequent violations. Each period of debarment shall run from the date the determination of noncompliance by the Administrator of Apprenticeship becomes an order of the California Apprenticeship Council.~~

~~(b)~~
1777.7. (a) A contractor or subcontractor ~~who~~ that knowingly violates Section 1777.5 shall forfeit as a civil penalty the sum of one hundred dollars (\$100) for each full calendar day of noncompliance. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(b) In the event a contractor or subcontractor is determined by the Director of Industrial Relations to have knowingly violated any provision of Section 1777.5, the Director of Industrial Relations shall deny to the contractor or subcontractor, both individually and in the name of the business entity under which the contractor or subcontractor is doing business, the right to bid on or receive any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Administrator of Apprenticeship becomes an order of the California Apprenticeship Council.

(c) In lieu of the penalty provided for in subdivision (a) or (b), the director may for a first-time violation and with the concurrence of the joint apprenticeship committee, order the contractor or subcontractor to provide apprentice employment equivalent to the work

hours that would have been provided for apprentices during the period of noncompliance.

(d) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(e) The interpretation and enforcement of Section 1777.5 and this section shall be in accordance with the rules and procedures of the California Apprenticeship Council.

SEC. 4. Section 3070 of the Labor Code is amended to read:

3070. There is in the Division of Apprenticeship Standards the California Apprenticeship Council, which shall be appointed by the Governor, composed of six representatives each from employers or employer organizations that sponsor apprenticeship programs under this chapter and employee organizations that sponsor apprenticeship programs under this chapter, respectively, geographically selected, and of two representatives of the general public. The Director of Industrial Relations, or his or her permanent and best qualified designee, and the Superintendent of Public Instruction, or his or her permanent and best qualified designee, and the Chancellor of the California Community Colleges, or his or her permanent and best qualified designee, shall also be members of the California Apprenticeship Council. The chairperson shall be elected by vote of the California Apprenticeship Council. Beginning with appointments in 1985, three representatives each of employers and employees, and one public representative shall serve until January 15, 1989. In 1987, three representatives each of the employers and employees, and one public representative shall serve until January 15, 1991. Any member whose term expires on January 15, 1986, shall continue to serve until January 15, 1987. Thereafter each member shall serve for a term of four years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his or her predecessor shall be appointed for the remainder of that term. Each member of the council shall receive the sum of one hundred dollars (\$100) for each day of actual attendance at meetings of the council, for each day of actual attendance at hearings by the council or a committee thereof pursuant to Section 3082, and for each day of actual attendance at meetings of other committees established by the council and approved by the Director of Industrial Relations, together with his or her actual and necessary traveling expenses incurred in connection therewith.

SEC. 5. Section 3073.1 is added to the Labor Code, to read:

3073.1. (a) The division shall audit ~~all apprenticeship programs~~ each apprenticeship program approved under this chapter at least once every ~~five years to ensure that the provisions of this chapter are being followed, that only qualified instructors are being used, that apprentices are actually receiving the training and instruction required by the apprenticeship agreement, that apprentices are actually graduating from the program, that graduates have actually acquired the skills and training necessary for the work force, and that the programs have actually implemented affirmative action programs for minorities and women in accordance with the rules, regulations, and guidelines of the California Apprenticeship Council.~~ Every apprenticeship five years to ensure that the program is complying with its standards, that all on-the-job training is performed by journeymen, that all related and supplemental instruction required by the apprenticeship standards is being provided, that all work processes in the apprenticeship standards are being covered, and that graduates have completed the apprenticeship program's requirements. The California Apprenticeship Council may adopt industry-specific training criteria, and these audits shall

ensure that any applicable training criteria are being followed. The division shall also examine each apprenticeship program to determine whether apprentices are graduating from the program on schedule or dropping out and to determine whether graduates of the program have obtained employment as journeymen. Every apprenticeship program sponsor shall have a duty to cooperate with the division in conducting an audit.

~~Audit~~
(b) Audit reports shall be presented to the California Apprenticeship Council and shall be made public, except that the division shall not make public information which would infringe on the privacy of individual apprentices. The division shall recommend remedial action to correct deficiencies recognized in the audit report, and the failure to correct deficiencies within a reasonable period of time shall be grounds for withdrawing state approval of a program. Nothing shall prevent the division from conducting more frequent audits of apprenticeship programs where deficiencies have been identified.

(c) The division shall give priority in conducting audits to programs that have operated under approval of the California Apprenticeship Council for fewer than 10 years and to programs that have been identified as having deficiencies. The division may conduct simplified audits for programs with fewer than five registered apprentices.

SEC. 6. Section 3075 of the Labor Code is amended to read:

3075. (a) An apprenticeship program sponsor may be a joint apprenticeship committee, unilateral management or labor apprenticeship committee, or an individual employer. Programs may be approved by the chief in any trade in the state or in a city or trade area, whenever the apprentice training needs justifies justify the establishment. Where a collective bargaining agreement exists, a program shall be jointly sponsored unless either party to the agreement waives its right to representation in writing. Joint apprenticeship committees shall be composed of an equal number of employer and employee representatives.

(b) For purposes of this section, the apprentice training needs shall be deemed to justify the approval of a new apprenticeship program only if any of the following conditions are met:

(1) There is no existing apprenticeship program approved under this chapter serving the same craft or trade and geographic area.

(2) Existing apprenticeship programs approved under this chapter that serve the same craft or trade and geographic area do not have the capacity, or neglect or refuse, to dispatch sufficient apprentices to qualified employers willing to abide by the applicable apprenticeship standards.

(3) Existing apprenticeship programs approved under this chapter that serve the same trade and geographic area have been identified by the chief or the California Apprenticeship Council as deficient in meeting their obligations under this chapter.

SEC. 7. Section 3080 of the Labor Code is amended to read:

3080. (a) For the purpose of providing greater diversity of training or continuity of employment, any apprentice agreement made under this chapter may in the discretion of the California Apprenticeship Council be signed by an association of employers or an organization of employees instead of by an individual employer. In that case, the apprentice agreement shall expressly provide that the association of employers or organization of employees does not assume the obligation of an employer but agrees to use its best endeavors to procure employment and training for an apprentice with one or more

employers who will accept full responsibility, as herein provided, for all the terms and conditions of employment and training set forth in the agreement between the apprentice and employer association or employee organization during the period of the apprentice's employment. The apprentice agreement shall also expressly provide for the transfer of the apprentice, subject to the approval of the California Apprenticeship Council, to an employer or employers who shall sign a written agreement with the apprentice, and if the apprentice is a minor, with the apprentice's parent or guardian, as specified in Section 3079, contracting to employ the apprentice for the whole or a definite part of the total period of apprenticeship under the terms and conditions of employment and training set forth in the apprentice agreement.

~~(b) All apprenticeship programs with more than one employer or an association of employers shall include provisions sufficient to ensure meaningful and trustworthy representation of the interests of employees and apprentices in the management of the program.~~

(b) Apprenticeship programs not sponsored by joint apprenticeship committees shall include in their standards provisions to ensure that the interests of journeymen and apprentices are taken into account in the management of the program.

~~SEC. 7. Section 3098 is added to the Labor Code, to read:~~

~~3098. Apprenticeship standards adopted pursuant to Section 3071 shall not vary based on whether an apprentice in the building and construction trades is employed on a public works project.~~

~~SEC. 8. Section 3098.1 is added to the Labor Code, to read:~~

~~3098.1. Employers in the building and construction trades shall not employ individuals registered in approved apprenticeship programs as nonapprentices on construction projects so as to avoid complying with apprenticeship standards for minimum wages, maximum hours, and working conditions. Apprenticeship standards under this chapter shall apply to all individuals registered in approved apprenticeship programs whenever they are employed on construction projects.~~

SEC. 8. Section 3098 is added to the Labor Code, to read:

3098. (a) Apprenticeship standards for minimum wages, maximum hours, and working conditions adopted by the California Apprenticeship Council pursuant to Section 3071 shall not vary based on whether the apprentice is employed on public work.

(b) An apprentice registered in an approved apprenticeship program in any of the building and construction trades shall be covered by the standards for minimum wages, maximum hours, and working conditions adopted by the California Apprenticeship Council pursuant to Section 3071 for all work performed by the individual on any construction project, regardless of whether the individual is classified by the employer as an apprentice with respect to particular work.